IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5712 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

HARIJAN MANSUKH PITHA GOHEL

Appearance:

PUBLIC PROSECUTOR for Petitioner

NOTICE SERVED BY DS for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 08/02/2000

ORAL JUDGEMENT

1. Heard learned Additional Public Prosecutor, Mr. S.K. Patel. Though Rule is served by direct service, the opponent has chosen not to appear before this Court.

2. Mr. Patel has drawn attention of this Court to the fact that the opponent, who was released on bail by an order of this Court dated 27.8.1996, passed in Criminal Misc. Application No.3824 of 1996, has committed breach of conditions in the nature of not marking presence as directed by this Court. In support of his statement, he has produced copy of the register which indicates that the opponent-accused has stopped marking his presence from 16th May, 1997.

2.1 Mr. Patel has also drawn attention of this Court to pages 12 and 15, which are copies of the F.I.R. lodged against the opponent vide C.R.No. I-23 of 1997 of Shil Police Station and C.R.No.I-28 of 1997 of the same Police Station, involving the opponent for offences punishable under Sections 452, 323, 504 and 506(2) of Indian Penal Code on one occasion and Sections 452, 354, 324 and 506(2) of Indian Penal Code on other occasion. These offences are alleged to have been committed on 23rd April, 1997 and 21st May, 1997, i.e. while the opponent was on bail.

2.2 Mr. Patel also urged that the conditions indicate that the accused was not supposed to take undue advantage of his liberty and misuse his liberty and still he has involved himself in offences.

3. It is, therefore, urged that the bail granted to the opponent may be cancelled by this Court.

4. This Court, while admitting the opponent to bail by order dated 27th August, 1996 in Criminal Misc. Application No.3824 of 1996, observed as under :-

> "If breach of any of the above conditions is committed, Sessions Judge at Junagadh will be free to issue and/or take appropriate action in the matter."

5. In view of the above direction, the prosecution is free to move this Sessions Court for appropriate orders and, therefore, without observing anything on merits, this Court refuses to entertain this application and it would be open for the prosecution to move the Sessions Court for appropriate directions in the facts stated above and, if such application is made, the Sessions Court will dispose of the same in accordance with law. Rule is discharged.

[A.L. DAVE, J.]

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